SURFACE RIGHTS BOARD
(formerly known as the Mediation and Arbitration Board)

ANNUAL REPORT

April 1, 2010 to March 31, 2011

Table of Contents

	Page
Board Profile and Mandate	1
Dispute Resolution Activities	3
Other Board Activities	7
Stakeholder Consultation and Process Revisions	7
Administration	7
Filing of Surface Leases	7
Finances	9
Challenges for 2011/12	10
Appendix 1 – Overview of Board Process	11
Appendix 2 – Board Members' Biographical Information	13

Board Profile and Mandate

The Surface Rights Board (SRB or the Board) is a quasi-judicial administrative tribunal established under the *Petroleum and Natural Gas Act* (*PNGA*). The Board has jurisdiction to resolve disputes under the *PNGA*, *Mining Right of Way Act*, *Mineral Tenure Act*, *Geothermal Resources Act*, and *Coal Act*.

In British Columbia, most landowners do not own subsurface rights to petroleum, natural gas, or minerals. The majority of subsurface rights are owned by the Crown. The government can issue rights to resource companies and free miners for the exploration and development of subsurface resources on private property. The resource company or free miner must compensate landowners for loss or damage caused by entering and using their land to access subsurface resources. The Board's role is to assist in resolving disputes when the parties cannot agree on compensation or other terms of entry to land.

When a landowner and a resource company or free miner are unable to reach an agreement on right of entry to the land and the compensation that should be paid to the landowner for that right of entry, the company or free miner may apply to the Board for mediation and arbitration of the dispute. The Board may make an order allowing a person or company to enter private land if the Board is satisfied they need the land to explore for, develop, or produce a sub-surface resource. The Board does not have jurisdiction to determine whether a proposed subsurface installation is appropriate or complies with the legislation and regulations.

If damage to land is caused by an entry for the purpose of exploring for, developing or producing a subsurface resource, the landowner may apply to the Board for mediation and arbitration of damages payable by the subsurface holder.

If the parties to a surface lease cannot agree to terms for rent renegotiation after a certain period of time, either party may apply to the Board for arbitration of their dispute.

The Board also has jurisdiction to resolve disputes about whether the terms of a surface lease have been complied with.

An overview of the Board's processes may be found in Appendix 1.

The Board is accountable to the Minister of Energy and Mines but is independent of the Minister and Ministry in its decision making capacity and in the management of applications before it.

The Board has a part-time chair, and may have up to eight additional part-time members.

The following Board members served during fiscal year 2010/11:

Name	Position	Start date	Expiry
Cheryl Vickers	Chair	July 22, 2007	Dec. 31, 2013
Robert Fraser	Vice Chair	July 22, 2007	July 31, 2012
Simmi Sandhu	Member	July 22, 2007	July 31, 2012
William Oppen	Member	Dec. 8, 2008	Dec. 31, 2013
Viggo Pedersen	Member	March 5, 2009	July 31, 2011
Tracey Wolsey	Member	March 5, 2009	July 31, 2011

Biographical information on the Board Members is at Appendix 2.

Dispute Resolution Activities

The Board received 72 applications from April 1, 2010 to March 31, 2011, all under the *PNGA*. The Board did not receive any applications under the *Mineral Tenure Act*, *Mining Right of Way Act, Coal Act* or *Geothermal Resources Act*..

Nature of Application	**# received in period**
PNGA (right of entry/compensation for wellsite)	7
PNGA (right of entry/compensation for flowline)	48
PNGA (damages)	1
PNGA (rent review)	15
PNGA (compliance)	1
Total new applications	**72**
Cases outstanding from previous year	33
Total caseload in period	**105**

This level of activity was significantly higher than last year, when the Board received 36 applications, and almost five times higher than the previous year when the Board only received 15 applications.

The Table below shows the number of applications completed during the period and open at the end of the period.

Case completions	# before the Board	Completed in period	Open at March 31, 2010
Applications received in 2010/11	72	28	44
Active applications from previous years at April 1, 2010	33	17	16
Total	**105**	**45**	**60**

Of the applications open at March 31, 2010, 46 were at the mediation stage of the process and 9 at the arbitration stage. In 7 of these applications, an arbitration had been held, but the decision was outstanding. Two applications were stayed pending resolution of issues within the jurisdiction of the Oil and Gas Commission. Several applications at the mediation stage were being held contingent upon resolution of other related cases.

Outstanding cases at year-end	Deficient	Stayed Pending OGC Process	Mediation stage	Arbitration stage	Post Arbitration	Total
PNGA	3	2	46	9	0	**60**

The following Table shows the type and volume of dispute resolution activities in the reporting period compared to the previous three years.

Activity	2010/11	2009/10	2008/09	2007/08
Pre-hearing conferences	20	19	16	24
Mediations	20	8	9	8
Arbitrations	4	0	3	1
Applications resolved following Board pre-hearing conferencing or mediation	21	4	7	8
Applications withdrawn or settled outside the Board	20	3	7	not available
Applications dismissed for lack of jurisdiction	0	1	1	2
Applications determined by Arbitration	4	1	2	1

The following Table shows the type and number of formal orders issued by the Board in the reporting period.

Type of Order	Number
Right of Entry Orders	32
Compensation decisions	4
Damages decisions	0
Rent Review decisions	2
Reconsideration decisions	1
Jurisdiction decisions	2
Other	2

Most of the right of entry orders were to allow entry to land for the purpose of construction and operation of a flowline. Nine of these orders were for right of entry to conduct a survey for a single project. With recently enacted provisions of the *Oil and Gas Activities Act* clarifying the process respecting entry to land to survey for pipelines, the Board has changed its practice and, in future, will not entertain applications for a right of entry order for pipeline surveying. Nineteen of the entry orders related to construction of a single pipeline project. Of the compensation decisions, one related to both a wellsite and flowline, and reflected an agreed resolution. The other three were arbitrated decisions all relating to the compensation payable for entry to construct and operate a flowline.

The Board's decisions may be judicially reviewed under the *Judicial Review Procedure Act* within the time established by the *Administrative Tribunals Act*. As of March 31, 2011, two judicial review applications were outstanding.

Other Board Activities

Process Revisions:

Amendments to the *PNGA* came into force October 4, 2010 necessitating revision of the Board's Rules and Information Sheets. The Board published revised Rules, Information Sheets and new Forms in conjunction with the coming into force of the *PNGA* amendments. The Board Chair continues to work with the Ministry in the development of regulations under the revised *PNGA*.

The Board will continually review and evaluate its processes and consult with the community to ensure that it is providing appropriate dispute resolution services, within its legislative mandate, that meet the needs of its stakeholders.

Administration:

The Chair of the SRB, Cheryl Vickers, is also the Chair of the Property Assessment Appeal Board (PAAB). The Ministry of Energy and Mines, the Ministry of Community, Sport and Cultural Development (responsible for PAAB), and PAAB have entered into a Memorandum of Understanding appointing PAAB with the responsibility to oversee the operations and provide day to day administrative services for the SRB. The Board has a Service Agreement with Service BC in Fort St. John and Dawson Creek to provide the public with a local contact point and personal assistance in reviewing applications. The volume of inquiries through Service BC is very low. Most clients communicate directly with the Board through its office in Richmond via email or toll free phone or fax.

The Board launched its new website October 4, 2010 in conjunction with the revisions to the *PNGA*. The website provides online Forms for making applications to the Board as well as access to Board decisions, the legislation, Rules, and Information Sheets.

The Ministry of Finance is holding approximately $405,050 in security deposits (some dating back to 1976) ordered to be paid by the Board prior to entering land. In the reporting period, the Board processed two applications for the return of security deposits and refunded $3,000.

Filing of Surface Leases:

Section 178 of the *PNGA* requires the holders of surface rights to provide the Board with copies of surface leases and right of way agreements. Compliance with this provision has been slow, but as of the end of the reporting period the Board was starting to receive copies of agreements as required.

The Board is required to make copies of surface leases and right of way agreements available for public inspection at its office. The Board would like to

make information contained in surface leases more easily available to parties to applications before it for research purposes and to assist them with preparation of their case, but is unable to do so until a regulation prescribing the information that may be published is enacted. As most of the participants to Board proceedings are in the Peace River area of BC, access to lease information solely by attendance at the Board's office does not provide a satisfactory means of making the information available.

Finances

The Board's budget for 2010/11 was $108,000. As detailed in the table below, the Board was under budget by $18,665.

Expenditure Type	Budget	Actuals	Variance[1]	Notes
Salaries[2]	51,000	48,817	2,183	Charges based on MOU with Property Assessment Appeal Board
Benefits	12,000	10,960	1,040	
Board Member fees and expenses	21,000	9,509	11,491	Some Board work covered under salaries
Travel	23,000	8,388	14,613	
Office overhead[3]		9,117	(9,117)	Covered by budget under travel
Office and business	1,000	2,545	(1,545)	Hotel room rental for higher number of hearings
Total Expenditures	**108,000**	**89,335**	**18,665**	

Notes:

1. In the variance column (brackets) denote that actual expenditures were over budget.

2. The majority of salaries and benefits were for the Chair, Vice Chair and one Board member who are cross-appointed to the Property Assessment Appeal Board.

3. Overhead charges were billed at 15% of salary and benefits costs as per an MOU between the Property Assessment Appeal Board and MEM.

Challenges for 2011/12

The Board anticipates that the number of applications will continue at a level similar to the past year or possibly increase.

Amendments to the *PNGA* in 2010 resulted in new and expanded jurisdiction for the Board. Some of the increase to the Board's activity is attributable to its expanded jurisdiction. The Chair will continue to consult with stakeholders, evaluate the effectiveness of the Board's new Rules and practices and consider whether further changes are necessary.

The Board will work with the Ministry in the development of regulations under the *PNGA*. In particular, the Board would like to see the development of a regulation to prescribe the information from surface leases that the Board may publish pursuant to section 178(4) of the *PNGA*. The Board will also work with the Ministry in the development of an administrative penalty regulation enabling the Board to impose administrative penalties under section 179 of the *PNGA* for failure to provide the Board with copies of surface leases under section 178 of the *PNGA*. In the meantime, the Board will work with industry and other stakeholders to encourage compliance with section 178 of the *PNGA*.

The Board will work on enhancing the information available to assist participants to Board applications.

The Chair will meet with the Commissioner of the OGC to ensure the Memorandum of Understanding on coordinated dispute resolution is working effectively and consider whether changes are required.

Appendix 1

Overview of the Board's Process

Application

An application must be made on the form prescribed by the Board in its Rules. The Board reviews applications to ensure that they are within its jurisdiction and that they are complete and comply with the Board's Rules and relevant legislation. If an application is deficient, the Board will write to the applicant to provide an opportunity to correct any deficiencies within a certain time. The Board may dismiss the application if the deficiencies are not corrected, or if an application is not within the Board's jurisdiction.

Mediation

A mediation is a dispute resolution process that attempts to facilitate resolution of the issues by agreement. A mediations may be conducted in-person or by telephone conference. A mediation is confidential and without prejudice to the positions the parties may take later in any arbitration proceedings.

If the parties have not resolved the issues at the end of the mediation session, the Board Member may schedule another mediation or refuse further mediation. If the mediator determines that access to private land is needed to explore for, develop or produce a subsurface resource, the mediator may issue a right of entry order and order the payment of a security deposit and partial payment for compensation. If the mediator makes an order refusing further mediation, the Board must arbitrate the dispute.

Arbitrations

The Board must arbitrate when the parties cannot reach an agreement. An arbitration is a dispute resolution process where each party presents evidence and arguments and the Board makes a decision based on those submissions.

Before an arbitration hearing, the Board will require the parties to attend a pre-hearing conference, usually conducted by telephone. The Board member will, in consultation with the parties, determine how the application will proceed including determining the issues to be decided, and setting dates for hearing and for the pre-production of evidence and witness lists.

The Board may conduct an arbitration hearing by telephone conference, by written submission, or in-person depending on the nature and complexity of the issues.

In-person hearings are open to the public and may be presided over by a panel of one or more members of the Board. Persons giving evidence at a hearing must swear an oath or affirm that their evidence will be the truth. The panel has control over the conduct of the hearing, including how the evidence is presented, what evidence is admitted, and the issuance of summons for witnesses.

Following the conclusion of the arbitration hearing, the panel will issue a written decision with reasons.

Evidence

The Board may accept any evidence that it considers relevant, necessary and appropriate with the exception of evidence that is inadmissible in court because of a privilege under the law of evidence. The Board will normally set timelines in advance of the hearing for the parties to submit documents or expert reports they intend to rely on in the hearing.

Withdrawals or Consent Orders

A party may withdraw all or part of an application at any time, by completing a Withdrawal Form and delivering it to the Board and the other parties. If the parties settle the application, they must advise the Board and either withdraw the application or request that the Board incorporate the terms of the settlement into a Consent Order.

Costs

The Board may order a party to pay all or part of the costs of another party and, in exceptional circumstances, may order a party to pay the costs of the Board. Ordinarily, unless otherwise ordered by the Board, landowners may expect to recover their costs of the mediation process. The Board may order costs on its own initiative or on the application of a party.

Appealing the Board's Decision

Decisions of the Board may be judicially reviewed by the Supreme Court of British Columbia.

Appendix 2

Board Members' Biographical Information

Cheryl Vickers, Chair

Cheryl Vickers is a lawyer and formerly practiced in a variety of fields, including administrative law. Cheryl was appointed as Chair of the Mediation and Arbitration Board in July 2007. She also serves as Chair of the Property Assessment Appeal Board, a position to which she was appointed in January 2003. Cheryl was active in the development of the British Columbia Council of Administrative Tribunals (BCCAT), and has served as a member of that organization's Board of Directors since its inception including as Secretary from 1996 to 1998 and as President from 2004 to 2006. Cheryl has assisted in curriculum development for BCCAT courses offering training to appointees of quasi-judicial boards and tribunals. She has delivered these courses and workshops on case management and alternate dispute resolution for tribunals.

Robert Fraser, Vice Chair

Active in the real estate industry for many years, Rob Fraser has been a sales person, agent/manager, owner, local board president, provincial association president, and chair of a real estate related insurance company. In addition to his extensive experience and training in real property valuation, Rob also has expertise and training in conflict resolution, mediation, arbitration, and negotiation. He has a BA, an MA and did doctoral studies specializing in micro-demographic models. Rob was appointed as a Vice Chair to the Property Assessment Appeal Board in 1998. He was appointed to the Mediation and Arbitration Board as a member in 2007 and appointed Vice Chair in December 2008.

William Oppen

Bill Oppen is retired and lives in Dawson Creek. Prior to his retirement, Mr. Oppen was the Deputy Minister of Renewable Resources for the Yukon government. He also served as Deputy Minister of Economic Development and has held senior positions with the government of Alberta and the Federal government. He has served on numerous committees including one looking at new work heritage sites for Canada. Bill is a published author and currently is a member of the Board of Directors of the Provincial Capital Commission. He was appointed to the Mediation and Arbitration Board in 2008 as a member.

Viggo Pedersen

Viggo Pedersen was a dairy farmer for 30 years, during which time he represented the dairy farmers to the British Columbia Milk Producers Association and served as the Dairy Director of British Columbia Investment Agriculture.

Active in the community, Mr. Pedersen has been a member of the Chamber of Commerce, and the Rotary Club. He is also a former member of the Peace River Regional District Board of Variance. Currently, Mr. Pedersen is a Director of the Northern Lights College Foundation. He was appointed to the Mediation and Arbitration Board in 2009 as a member.

Simmi K. Sandhu

Simmi Sandhu is a lawyer, called to the BC Bar in 1990. Simmi was appointed as a member of the Mediation and Arbitration Board in 2007 and is also a Vice Chair of the Property Assessment Appeal Board, a position she has held since 2001. As a lawyer, Simmi's areas of practice included administrative law, civil litigation, corporate/commercial law and real estate transactions. She has extensive experience in quasi-judicial proceedings, having acted as a Chair of the Board of Referees and has training and experience in conflict resolution and mediation. Simmi is on the Board of Directors of the British Columbia Council of Administrative Tribunals, currently serving as President.

Tracey Wolsey

Tracey Wolsey lives with her family near Charlie Lake, BC and is a stakeholder relations project manager with Suncor Energy. She has been involved in oil and gas and wind power projects for over ten years. Tracey spends most of her time in Alberta and BC, but has been involved in projects in Saskatchewan, the US and Australia. She has worked as an economic development advisor with the Prophet River Indian Band, and as the coordinator of the Peace River-Liard Community Futures Committee. In 1993 Tracey was elected to a three year term on the Charlie Lake Commission and served as its chair for two years. Over the years she has also served on a wide range of committees involving industry, education and stakeholder issues, most recently sitting as co-chair of the Northeast Energy Mines Advisory Committee. Tracey earned a Bachelor of Arts degree at the University of Calgary and a Masters degree at the University of Northern BC. She was appointed to the Mediation and Arbitration Board in 2009 as a member.